IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.MC.No. 485 of 2007()

AGAINST THE ORDER IN CC.10,11,12,13,14/2006 of the ENQUIRY COMMR. & SPL. JUDGE, TRIVANDRUM
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PETITIONER:

C.SWARNAPPAN,
RESIDING AT RAJ COTTAGE,
CHAMAVILA, POOVACHAL P.O.,KATTAKADA,
THIRUVANANTHAPURAM.

BY ADV. SRI.L.MOHANAN
SMT.LIGEY ANTONY
SRI.M.KESAVA MENON

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR.

2. K.SREEKUMARAN NAIR,
DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE & ANTI-CORRUPTION BUREAU,
THIRUVANANTHAPURAM UNIT.

3. M.RAJ MOHAN
DEPUTY SUPERINTENDENT OF POLICE,VACB(SR),
THIRUVANANTHAPURAM.

4. C.C.GOPI,
(RETIRED DIRECTOR OF TREASURIES),
RESIDING AT 'IYYANI HOUSE',ANCHUMORTHY P.O.,
MANGALAM, PALAKKAD.

5. K.BABURAJ,
MANAGER, OFFICE OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE VIGILANCE, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 485 OF 2007

Dated this the 29th day of March, 2007

ORDER OF REFERENCE

The petitioner now faces indictment in 5 different criminal prosecutions – all, inter alia, under under Sec.13(1)(d) read with Sec.13(2) of the Prevention of Corruption Act and Secs.120B and 468 of the IPC. The petitioner is an officer of the Treasury Department. An F.I.R. was registered as VC.11/98/Tvm dated 26/6/98 into certain alleged crimes committed in the Treasury Department. The petitioner was not shown by name as an accused in the said F.I.R. The crime was registered as early as in 1998 (earlier, a crime was registered at the local Police Station and that were re-registered in 1998, it is submitted). Departmental proceedings were initiated against the petitioner; but they were not completed. The petitioner's prospects in employment were being affected because of the pendency of

the disciplinary proceedings. The petitioner therefore came before this Court with W.P.(c) No.5347/04 complaining about the delay in the final disposal of the disciplinary proceedings against him.

2. The State in that matter raised a contention that the vigilance investigation is going on and that the departmental disciplinary proceedings cannot be completed before such investigation is completed. The learned Judge in Annexure-I judgment made the following observations in para-4:

> "4. Because of the passage of almost seven years, I think it will be really difficult to follow up the matter by way of vigilance enquiry. Therefore, I direct that such enquiries need not be proceeded further."

3. The respondents – State of Kerala, represented by the Secretary (Finance), Government Secretariat, Thiruvananthapuram, and the Director of Treasuries, took up the matter in appeal. The learned Judges of the Division Bench by Annexure-A2 judgment upheld the order of the learned single

Judge. The following specific observations were made in the judgment under which the appeal was dismissed:

> "2. ..... In this background, we are clearly of the view that the learned single Judge was justified in directing the Department not to continue with the vigilance enquiry against the respondent."

4. Departmental disciplinary proceedings have now come to an end. A writ petition is pending against the minor penalty imposed in the disciplinary proceedings against the petitioner.

5. Be that as it may, the investigation into Crime No. VC.11/98/Tvm dated 26/6/98 appears to have continued. Long later, the Vigilance authorities filed the final report dated 20/6/06 arraying the petitioner as one of the accused in 5 different prosecutions. On receipt of summons in the said prosecutions, the petitioner has come before this Court with this Crl.M.C. His contention, in short, is that in view of the judgments of the learned single Judge and the Division Bench in Annexures-A1 and A2, the Vigilance police was not entitled to continue the investigation and their conduct of continuing the investigation culminating in the final reports filed now is bad in

law. The same deserve to be set aside by invoking the powers under Sec.482 of the Cr.P.C.

6. I find it difficult to assume that the observations extracted above have the effect of indirectly quashing the criminal investigation that was already on and in progress. However, I agree with the learned counsel for the petitioner that the true import of the appellate judgment of the Division Bench in which the single Judge's decision was upheld falls for consideration. I am of opinion that it will only be apposite and proper that the matter is referred to a Division Bench for an interpretation and true understanding of the observations extracted above in the appellate judgment under which the judgment of the learned single Judge with the observations which have also been extracted above have been upheld.

7. I adjourn this matter under Sec.3 of the Kerala High Court Act for consideration before a Division Bench. Call before the Division Bench on 2/4/2007.

(R. BASANT, JUDGE)

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